

1 ROBBINS GELLER RUDMAN
2 & DOWD LLP
3 MICHAEL J. DOWD (135628), miked@rgrdlaw.com
4 655 West Broadway, Suite 1900
5 San Diego, California 92101
6 Telephone: 619-231-1058
7 Facsimile: 619-231-7423
8
9 JOHN C. HERMAN (*pro hac vice*), jherman@rgrdlaw.com
10 RYAN K. WALSH (*pro hac vice*), rwalsh@rgrdlaw.com
11 PETER M. JONES (*pro hac vice*), pjones@rgrdlaw.com
12 ROBERT J. LEONARD (*pro hac vice*), rleonard@rgrdlaw.com
13 3424 Peachtree Road, N.E.
14 Monarch Centre, Suite 1650
15 Atlanta, Georgia 30326
16 Telephone: 404-504-6500
17 Facsimile: 404-504-6501
18
19 Attorneys for Plaintiff U.S. Ethernet Innovations, LLC
20 [Additional Counsel Appear on Signature Page]

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

16 U.S. Ethernet Innovations, LLC,) Case No. 4:10-cv-03724-CW(LB)
17 Plaintiff,) Case No. 4:10-cv-05254-CW(LB)
18 vs.)
19 Acer, Inc., *et al.*,)
20 Defendants,)
21 Atheros Communications, Inc., *et al.*,)
22 Intervenors.)
23)
24)
25 U.S. Ethernet Innovations, LLC,)
26 Plaintiff,)
vs.)
AT&T Mobility, LLC, *et al.*,)
Defendants.)
PLAINTIFF U.S. ETHERNET
INNOVATIONS, LLC'S CASE
MANAGEMENT STATEMENT
Judge: Honorable Claudia Wilken
Place: Courtroom 2, 4th Floor
Date: February 27, 2014
Time: 2:00 p.m.

1 Pursuant to this Court's Order dated February 5, 2014 (Dkt. No. 981) and the Standing Order
 2 for All Judges of the Northern District of California, Plaintiff U.S. ETHERNET INNOVATIONS,
 3 LLC ("USEI") submits this Case Management Statement in advance of the Court's conference on
 4 February 27, 2014. The facts of this case were previously set forth in the Case Management
 5 Conference Statements submitted to the Court on June 21, 2013 [Dkt. No. 821], February 7, 2013
 6 [Dkt. No. 686] and November 2, 2012 [Dkt. No. 649]. Rather than repeat those facts herein, USEI
 7 refers the Court to these prior submissions and will simply update the relevant sections below.

8 **I. JURISDICTION AND SERVICE**

9 This Court has jurisdiction over this dispute pursuant to 35 U.S.C. §§ 1331, 1338, 2201, and
 10 2202. All parties have been served.

11 **II. FACTS**

12 On October 9, 2009, USEI brought an action alleging infringement of U.S. Patent Nos.
 13 5,434,872, 5,732,094, 5,307,459 and 5,299,313 (collectively, the "Patents-in-Suit") against eight
 14 defendants: Acer,¹ Apple, Inc., Asus,² Dell Inc., Fujitsu,³ Hewlett Packard Co., Sony,⁴ and Toshiba.⁵
 15 *U.S. Ethernet Innovations, LLC v. Acer, Inc., et al.*, No. 4:10-cv-3724 (N.D. Cal. October 9, 2009)
 16 (the "Acer Action"). Five parties intervened asserting claims against USEI, namely Intel
 17 Corporation on May, 10, 2010; Marvell Semiconductor, Inc. on May 19, 2010; Nvidia Corporation
 18

19 _____
 20 ¹ The Acer defendant group includes Acer, Inc., Acer America Corporation, and Gateway, Inc.
 (collectively, "Acer").

21 ² The Asus defendant group includes Asus Computer International and AsusTek Computer Inc.
 (collectively, "Asus").

23 ³ The Fujitsu defendant group includes Fujitsu Limited and Fujitsu America, Inc. (collectively,
 24 "Fujitsu").

25 ⁴ The Sony defendant group includes Sony Corporation, Sony Corporation of America, and Sony
 Electronics Inc. (collectively, "Sony").

26 ⁵ The Toshiba defendant group includes Toshiba Corporation, Toshiba America, Inc., and Toshiba
 27 America Information Systems, Inc. (collectively, "Toshiba").

1 on May 20, 2010; Atheros Communications, Inc. on June 2, 2010 and, on December 22, 2010,
 2 Broadcom Corporation.

3 On March 20, 2010, USEI brought a second action alleging infringement of the Patents-in-
 4 Suit against a number of parties. *U.S. Ethernet Innovations, LLC v. AT&T Mobility, LLC, et al.*, No.
 5 4:10-cv-5254 (N.D. Cal. March 10, 2010) (the “AT&T Action”). On November 17, 2010, the
 6 AT&T Action was transferred to this District. The AT&T Action was consolidated with the Acer
 7 Action in front of Judge Ware. Sigma Designs intervened in the AT&T case on March 14, 2013.

8 There have been some updates in the case that warrant discussion.

9 First, USEI has recently confirmed in deposition that Intel carefully analyzed, tested and
 10 broke down 3Com’s industry-leading Ethernet controllers, eventually copying the products
 11 embodying the inventions disclosed in the Patents-in-Suit. The result of this copying and willful
 12 infringement by Intel has an impact on several legal issues in the case, as set forth below, including
 13 the likely bar to any equitable defenses and enhanced damages.

14 Second, while discovery has been ongoing and much progress has been made, the Defendants
 15 here dumped literally hundreds of thousands of pages of documents on USEI in the past several
 16 weeks. Below is a list of these recent productions:

17	Acer	– 2/21/14 –	ACER-USEI003 (ACER-USEI00064042 – ACER-USEI0
18			064044)
19		– 1/29/14 –	ACER_USEI_E004 (ACER_USEI_E00000009)
20	Apple	– 1/13/14 –	APP_USEI 00414899 – APP_USEI00472801
21		– 1/27/14 –	APP_USEI 00149500 – APP_USEI00414898
22	Atheros	– 2/18/14 –	QAUSEID0007955 – QAUSEID0008819
23		– 2/20/14 –	QAUSEID0008820 – QAUSEID0009142
24	ASUS	– 1/31/14 –	ASUS0219643 – ASUS0219660
25		– 2/7/14 –	ASUS0219661 – ASUS0220398
26	AT&T	– 1/31/14 –	ATT000001 – ATT028700
27		– 2/4/14 –	ATT038701 – ATT038764
28	Dell	– 1/28/14 –	Dell_USEI 00313078-4737

1		– 2/8/14 –	Dell_USEI 00314738-5538
2	HP	– 1/24/14 –	HP00454236 - HP00454238
3		– 2/4/14 –	HP00454239-HP00454301
4			HP3COM00061215-HP3COM00061244
5	Intel	– 1/30/14 –	57183DOC000623 – 57183DOC00841
6		– 2/3/14 –	57191DOC000255-288;
7			57111DOC012394-454
8			57113DOC020157-463
9			57196DOC000001-36
10		– 2/6/14 –	57113DOC020164, 57113DOC020172 -173
11		– 2/10/14 –	57196DOC000037 – 57196DOC000090
12		– 2/12/14 –	57196DOC000091 – 57196DOC000134
13		– 2/13/14 –	57183DOC000842 – 57183DOC000939
14			57127DOC001676 –57127DOC005700
15		– 2/18/14 –	57195DOC021436
16			57196DOC000135 – 57196DOC000162
17		– 2/18/14 –	57196DOC000163 – 57196DOC000200
18		– 2/20/14 –	57197DOC000001 – 57197DOC000009
19	Marvell	– 2/20/14 –	MRVLUSEI00060869-64820
20	Sigma	– 12/27/13 –	SIGMA0003425 - SIGMA0183680
21		– 1/29/14 –	SIGMA0183681 – SIGMA0184233
22		– 2/21/14 –	SIGMA0183234 – SIGMA0206490
23	Toshiba	– 2/14/14 –	T0220549 – T0229195

24 Moreover, Defendants have withheld their witnesses despite many, many requests for dates
25 until the last possible moment in the discovery period. For example, for multiple defendants, the
26 only dates for deposition offered by the Defendants were in the week of March 3, 2014, the last
27 week of the discovery period. Next week alone, the last week of the discovery period, counsel for

1 USEI is being forced to take more than 12 depositions. Counsel have cooperated to schedule a
 2 number of depositions over the next 3 to 4 weeks past the current close of the discovery period.

3 While USEI is working diligently to accomplish all of the necessary discovery, the
 4 Defendants have frustrated USEI's efforts to complete it timely. As a result of these discovery
 5 tactics, USEI is forced to seek relief from the Court to extend the deadlines in the case for 30 days to
 6 complete the necessary depositions. USEI notes that there is sufficient time remaining in the current
 7 schedule that this slight extension will not affect the trial date.

8 Finally, USEI suggests that the Court defer the issue relating to how to structure the case
 9 until after dispositive motions are ruled upon. The case may look differently at that time either as a
 10 result of the Court's rulings or potential settlements with additional parties. For example, USEI has
 11 recently reached settlements with Broadcom Corp., Nvidia Corp. and NetGear, Inc. As a result of
 12 these settlements several of the accused products of current defendants have also been resolved. For
 13 the Court's convenience, USEI attaches as Exhibit A, a chart reflecting the current status of the
 14 defendants and intervenors in the case.

15 **III. LEGAL ISSUES**

16 **A. USEI**

- 17 **1.** Whether the defendants directly or indirectly infringed the Patents-in-Suit and whether the intervenors directly or indirectly infringed the Patents-in-Suit;
- 19 **2.** Whether the defendants' and intervenors' infringement of the Patents-in-Suit was willful;
- 21 **3.** The appropriate amount of damages for defendants' and intervenors' infringement of the Patents-in-Suit;
- 22 **4.** The defenses and counterclaims asserted by defendants and intervenors;
- 24 **5.** Whether Intel's willful copying of 3Com's inventions should result in all equitable defenses of Intel being dismissed; and
- 25 **6.** Whether and to what extent enhanced damages are warranted.

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1 **IV. MOTIONS**

2 USEI believes that a 30-day extension of the current case deadlines is appropriate to
3 conclude discovery and prepare expert reports. USEI also anticipates that multiple motions to
4 compel will be necessary.

5 **V. AMENDMENT OF PLEADINGS**

6 No updates.

7 **VI. EVIDENCE PRESERVATION**

8 No updates.

9 **VII. DISCLOSURES**

10 USEI served amended disclosures on all Defendants on January 22 and 23, 2014.

11 **VIII. DISCOVERY**

12 On February 19, 2013, the Court determined that discovery in this litigation will be governed
13 by the Federal Rules of Civil Procedure. (Dkt. No. 691.)

14 In addition, as set forth above in Section II, USEI believes that a 30-day extension to compel
15 discovery is warranted.

16 **IX. CLASS ACTIONS**

17 Not applicable.

18 **X. RELATED CASES**

19 There are two related cases that are currently active and pending:

20 (1) *U.S. Ethernet Innovations, LLC vs. Acer, Inc., et al.*, U.S. District Court, California
21 Northern District, Case No. 4:10-cv-03724-CW(LB); and

22 (2) *U.S. Ethernet Innovations, LLC vs. AT&T Mobility, LLC, et al.*, U.S. District Court,
23 California Northern District, Case No. 4:10-cv-05254-CW(LB).

24 There is one case that has been stayed:

25 (3) *Zions Bancorporation vs. U.S. Ethernet Innovations, LLC*, U.S. District Court,
26 California Northern District, Case No. 4:10-cv-03481-CW(LB).

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1 **XI. RELIEF**

2 USEI seeks: (1) a judgment that defendants and intervenors have directly infringed,
 3 contributorily infringed, and/or induced infringement of the Patents-in-Suit; (2) an award of all
 4 damages recoverable under the laws of the United States and the laws of the State of California in an
 5 amount to be proven at trial; (3) an award of treble damages pursuant to 35 U.S.C. § 284 as a result
 6 of defendants' and intervenors' willful infringement; (4) a preliminary, and thereafter permanent,
 7 injunction enjoining and restraining defendants and intervenors from directly infringing,
 8 contributorily infringing, and inducing the infringement of the Patents-in-Suit; (5) a judgment
 9 requiring defendants and intervenors to pay pre-judgment and post-judgment interest; (6) a
 10 determination that these actions are an "exceptional case"; (7) a judgment requiring defendants and
 11 intervenors to pay the costs of this action and attorneys' fees; and (8) such other and further relief as
 12 this Court may deem just and equitable.

13 **XII. SETTLEMENT AND ADR**

14 USEI completed mediations with the Defendants prior to the November 15, 2013 deadline.
 15 The mediations led to 3 settlements, with Broadcom, Nvidia and NetGear. No additional mediations
 16 are currently set.

17 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

18 No updates.

19 **XIV. OTHER REFERENCES**

20 No updates.

21 **XV. NARROWING OF ISSUES**

22 USEI is willing to work to narrow the number of claims at issue in this litigation pursuant to
 23 a reasonable schedule that provides USEI a fair opportunity to uncover non-public information
 24 relating to the merits of its infringement allegations. As illustrated in the schedule below, USEI
 25 proposes that the Court set forth for USEI to limit the number of asserted claims per patent for both
 26 USEI's infringement claims and defendants' and intervenors' counterclaims. In addition, the Court
 27 should similarly limit the number of asserted prior art references per patent.

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1 In addition, USEI believes that the Court should consider the issue of an appropriate structure
2 for trial after dispositive motions have been ruled upon. This case is likely to look quite different at
3 that time as a result of the Court's rulings as well as potential settlements with additional parties. As
4 described in Exhibit A, USEI has recently settled with three (3) parties and continues to work with
5 the defendants and intervenors to resolve the issues in this case.

6 **XVI. EXPEDITED SCHEDULE**

7 No updates.

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1 **XVII. SCHEDULING**

2 USEI requests the following updates on the Court's established deadlines:

3	<u>Event</u>	4	<u>Date</u>
5	USEI to identify no more than 15 asserted claims per defendant or intervenor	6	March 31, 2014
7	Close of fact discovery	8	April 2, 2014
9	All defendants and intervenors to jointly identify no more than 3 pieces of prior art per asserted claim	10	April 14, 2014
11	Deadline to disclose identities and reports of expert witnesses	12	May 30, 2014
13	Deadline to disclose identities and reports of rebuttal expert witnesses	14	June 27, 2014
15	Close of expert discovery	16	July 29, 2014
17	Deadline for Plaintiff to file its motion for judgment on the pleadings and any other dispositive motion, contained in a single brief of twenty-five pages or less	18	July 29, 2014
19	Deadline for Defendants and Intervenors to file their motion for summary judgment on remaining issues and their opposition to Plaintiff's dispositive motions, contained in a single joint brief of twenty-five pages or less.	20	July 29, 2014
21	Deadline for Plaintiff to file its reply in support of its dispositive motion and its opposition to Defendants' and Intervenors' dispositive motion, contained in a single brief of fifteen pages or less.	22	August 25, 2014
23	Deadline for Defendants and Intervenors to file their joint reply in support of their dispositive motion, contained in a single brief of fifteen pages or less.	24	September 14, 2014
25	Case Management Statement due	26	September 30, 2014
27	Hearing on dispositive motions and further case management conference	28	October 14, 2014 at 2:00 p.m.
29	Final pretrial conference	30	Wednesday, December 17, 2014, at 2:00 p.m.
31	Jury trial to begin	32	Monday, January 5, 2015, at 8:30 a.m.

1 **XVIII. TRIAL**

2 USEI requests a trial by jury. As explained above, USEI believes that identifying a structure
 3 for the trial in 2015 is premature at this point and likely to result in a lack of engagement in this
 4 litigation for any party not included in the initial structure. USEI requests that the Court revisit this
 5 issue after dispositive motions.

6 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

7 USEI has filed Corporate Disclosure Statements pursuant to Fed. R. Civ. P. 7.1, disclosing
 8 that the parent company of USEI is Parallel Technology, LLC. Hewlett Packard Co. may also have
 9 a financial interest in the subject matter in controversy.

10 **XX. OTHER MATTERS**

11 The parties agree to electronic service by e-mail of all documents pursuant to Federal Rule of
 12 Civil Procedure 5 and 6. Each party will identify an e-mail address or addresses for service.

14 DATED: February 25, 2014

ROBBINS GELLER RUDMAN
 & DOWD LLP

17

/s/ Robert J. Leonard
 18 ROBERT J. LEONARD

19 JOHN C. HERMAN
 20 RYAN K. WALSH
 21 PETER M. JONES
 22 ROBERT J. LEONARD
 23 3424 Peachtree Road, N.E.
 24 Monarch Centre, Suite 1650
 25 Atlanta, Georgia 30326
 26 Telephone: 404-504-6500
 27 Facsimile: 404-504-6501

28 JOHN K. GRANT
 29 SHAWN A. WILLIAMS
 30 Post Montgomery Center
 31 One Montgomery Street, Suite 1800
 32 San Francisco, California 94104
 33 Telephone: 415-288-4545
 34 Facsimile: 415-288-4534

MICHAEL J. DOWD
 655 West Broadway, Suite 1900

1 San Diego, California 92101
2 Telephone: 619-231-1058
3 Facsimile: 619-231-7423

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6 Attorneys for U.S. Ethernet Innovations, LLC

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9 **Certificate Pursuant to Local Rule 5-1(i)(3)**

10

11 I, Robert J. Leonard, am the ECF User whose identification and password are being used to

12 file Plaintiff USEI's Case Management Statement.

13 Dated: February 25, 2014

14 */s/ Robert J. Leonard*

15 Robert J. Leonard

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CERTIFICATE OF SERVICE

2 I hereby certify that on February 25, 2014, I authorized the electronic filing of the foregoing
3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing to
4 the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I
5 caused to be mailed the foregoing document or paper via the United States Postal Service to the non-
6 CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 25, 2014.

/s/ Robert J. Leonard

Robert J. Leonard

ROBBINS GELLER RUDMAN
& DOWD LLP
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)
E-mail: rleonard@rgrdlaw.com